

## **Title 7 CABLE TELEVISION**

### **Chapter 7.1 IN GENERAL**

#### **7.1.1 Community Antennae Television System.**

The municipal officers may contract on such terms and conditions as are in the best interests of the municipality, including the grant of an exclusive franchise for a period not to exceed ten (10) years, for the placing and maintenance of community antennae television systems and appurtenances or parts thereof, along the public ways and including contracts with operators of such systems which receive the services of television signal transmission offered by any public utilities using public ways for such transmission.

#### **7.1.2 Rate Regulations.**

A. This title is known as the cable television rate regulation ordinance and will be referred to herein as “this title.”

B. The purpose of this title is to implement the authority conferred on cable television franchising authorities to regulate basic service rates and charges.

C. The ordinance codified in this title is enacted pursuant to the Cable Television and Consumer Protection and Competition Act of 1992, as amended; pursuant to regulations adopted by the Federal Communications Commission (“FCC”), including but not limited to the “FCC Rate Regulations” as defined herein; and pursuant to 30-A M.R.S. §3001, as amended.

#### **7.1.3 Definitions.**

For the purposes of this title or the franchisee agreement, the following terms, phrases, words, abbreviations and their derivations have the meaning given herein, as set forth in this appendix, attached hereto as part of this title. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and vice versa. The word “shall” is always mandatory and not merely directory.

**Access** means cable casting on the cable system’s access channels for the following purposes: (1) non-commercial and non-discriminatory use by the public; (2) carriage of non-commercial educational programs or information; and (3) use for governmental purposes.

**Access channel(s)** means a video channel(s) which the franchisee makes available to the Town, without charge, for the purpose of transmitting programming by/for members of the public, Town departments, boards and agencies, public schools, educational, institutional, nonprofit and similar organizations.

**Access programming** means

(1) Public; non-commercial programming produced by the Town, or produced by any non-commercial operator authorized by the Town to provide public programming,

(2) Educational; non-commercial programming produced by the Town's public schools, or produced by any other non-commercial educational organization authorized by the Town to provide educational programming,

(3) Governmental; non-commercial programming produced by any Town department, agencies, boards, committees, or produced by any non-commercial governmental organization authorized by the Town to provide governmental programming. The aforementioned items are abbreviated as PEG (Public, Educational, and Governmental) access channel(s) PEG.

**Addressable converter and/or system signal control** means a method of signal processing by the franchisee that can electronically control from a central or remote location which tier(s) or individual channels a subscriber can receive, once the subscriber has been provided with a converter.

**Alphanumeric** means consisting of a combination of letters and numbers, used in reference to keyboards permitting communication in such form and in reference to channels or programs transmitting information in such form.

**Area outage** means an area outage occurs when cable or equipment is damaged, fails or otherwise malfunctions (collectively called "malfunctions"), and ten or more subscribers receiving services from that section of cable or that equipment receive unusable or no service as a result of that malfunction.

**Basic cable service** means any service tier that includes the retransmission of local television broadcast signals.

**Basic service rates and charges** means basic service tier rates and the charges for related equipment, installation and services which, pursuant to federal laws and regulations, may be regulated by franchising authorities.

**Basic service tier** means that tier of cable television service which contains, at a minimum, all local broadcast signals and the public, educational and governmental channels required by the franchise agreement. Provided that the contents of this tier meet this definition, the cable operator may, in its sole discretion, determine what (if any) additional service will be provided as part of this tier.

Additionally, basic service tier means a separately available or "unbundled" tier of cable service that must include:

- a. All signals of local commercial and non-commercial educational television and qualified low power stations carried to meet "must-carry" status under Sections 614 and 615 of the Cable Act and FCC rules;
- b. Any PEG access programming required by the franchise to be provided to subscribers;
- c. Any signal of any television broadcast station that is provided by the franchisee to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station; and

d. Any additional video programming signals or services added to the basic tier by the franchisee.

**Benchmark approach** means that theory of rate regulation which sets rates based upon “benchmarks” established by the FCC.

**Broadcast** means over-the-air transmission by a radio or television station.

**Cable Act** means the Cable Communications Policy and Communications Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as further amended.

**Cable home wiring** means the internal wiring within a subscriber's premises that begins at the demarcation point (about twelve (12) inches inside of where the wire enters the outside wall of a premise or home). Cable home wiring does not include any active elements such as amplifiers, converter, decoder or remote control unit's provider by the franchisee. These aforementioned items, one or more, may be included in the cable home wiring, if the subscriber has purchased them.

**Cable operator** means any cable television system operating with the Town.

**Cable programming service** means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (1) video programming carried on the basic service tier, (2) video programming offered on a pay-per-channel or pay-per-program basis, or (3) a combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service: (a) consists of commonly-identified video programming; and (b) is not bundled with any regulated tier of service.

**Cost-of-service approach** means that theory of rate regulation, to be initiated only by the cable operator, which allows the cable operator to charge rates in excess of the FCC benchmark rates upon a showing that the cost of providing cable service exceeds the benchmark rate.

**Cable service** means the one-way and two-way transmission to subscribers of video programming or other programming services, together with subscriber interaction, if any, which is required for the selection or use of such video programming.

**Cable system** means a multi-channel video programming distribution facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment designed to provide cable service and other services to multiple subscribers within the Town.

**Certification of compliance** means for a franchisee to implement rate reductions or refunds, it must certify its compliance with prescriptive measures mandated by the FCC or Franchisee Authority to adjust rate overcharges within ninety (90) days after the FCC or Authority orders refunds. The certification must cite the commission's or authority's order, state that the franchisee has complied fully with all provisions of the order, describe the precise measures the franchisee has take to implement the remedies and be signed by a representative of the franchisee.

**Channel** means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel. With respect to PEG channel requirements, the definition of channel also means a minimum allocation of 6 MHz of bandwidth.

**Converter** means a device attached to the subscriber's cable wiring or television set by the cable company that allows access to cable stations. The converter may allow for expanded reception capacity or may unscramble signals distributed over the cable system.

**Downstream channel** means a channel over which signals travel from the franchisee headend, or subheadend to an authorized recipient of programming.

**Downstream transmissions** means signals traveling from a franchisee distribution point to an authorized location.

**Drop and/or drop cable** means the cable that connects a subscriber's home, a PEG facility, or any other building or location to the franchisee network, feeder cable or an institutional network.

**Educational access channel(s)** means any channel or portion thereof that has been allocated for use by the Town for educational access programming.

**Effective date (franchise)** means the date the franchise agreement is signed.

**Feeder** Cable means the cable, connected to trunk cable, from which cable television signal service is distributed to subscribers, as distinguished from trunk cable (which distributes cable television service throughout the franchise area) and drop cable.

**FCC** means the Federal Communications Commission.

**FCC Rate Regulations** means Report and Order, In the Matter of Implementation of Sections of Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket 92-266, FCC 93-177 (released May 3, 1993), as amended.

**Franchising authority** means the Town of Kittery, acting pursuant to its authority under federal, state and local laws and regulations to authorize and oversee the provision of cable television service in Kittery.

**Franchisee** means any person or persons owning, controlling, operating, managing or leasing a cable system within the Town, pursuant to this title, and pursuant to any franchise granted to it by the Town. This term includes any lawful successor(s) to the interest of such person or persons where consent to such successor(s) is approved under the provisions of this title and under any applicable terms of a franchise agreement entered into pursuant to this title.

**Franchisee fee** means a fee that may be imposed by the franchisor on the franchisee as compensation for the rights provided to the franchisee under a franchise, including the rights to use the streets and public ways of the franchisor to operation and maintain the franchisee's cable system.

**Franchise and/or franchise agreement** means the non-exclusive right, privilege and authorization granted in accordance with this title to construct, operate and maintain a cable system, and appurtenances or parts thereof, in the streets, roads, alleys, and other public ways of the Town.

Any such authorization, in whatever form granted, does not mean or include any license or permit required for the privilege of transacting and carrying on a business within the Town as required by the ordinances and laws of the Town, or for attaching devices to poles or other structures, whether owned by the Town or a private entity, or for excavating or performing other work in or along street or public ways. A franchise agreement further defines the rights and responsibilities of each party in the operation of the cable system within the geographical area of the Town.

**Government access channel(s)** means any channel or portion thereof that has been allocated for use by the Town for governmental access programming.

**Gross annual revenues** means any and all payments or consideration of any kind made to or compensation received by a franchisee, its affiliates, subsidiaries, parents and any person or entity in which franchisee or any such affiliate, subsidiary or parent has a financial interest, directly or indirectly (collectively called "affiliated entities"), from subscribers, advertisers or other users of the cable system in connection with the operation and/or use of the cable system within the municipality, including but not limited to revenues from subscribers or users in payment for programs or signals received and/or transmitted, pay and subscription TV, fees paid for pay and/or pay-per-view services, optional programs and special contracts, charges for installation, connection, disconnection, reinstatement, downgrade, upgrade and any other similar fees, fees paid for channels designated for commercial use, advertising and carrier service revenue, all home-shopping service(s) revenues, rentals of local origination facilities, rentals of converter boxes, remote control units and other equipment, revenues from channel leasing, revenues received and fees paid for networking, cable modem and data services and internet access services, and any other moneys that constitute income attributable to the operation of the cable system in the municipality.

In the event that an affiliate is responsible for advertising, advertising revenues are be deemed to be the pro-rata portion of advertising revenues paid to the franchisee by an affiliate for said affiliate's use of the cable system for the carriage of advertising. Gross annual revenues do not include security deposits paid to the franchisee by subscribers, but do include franchise fees collected from subscribers or other users of the cable system and paid to the franchisee.

**Headend** means the electronic center(s) selected and used by the franchisee to distribute broadcast and/or cablecast signals over the cable system to subscribers in the Town.

**Institutional Network (I-NET)** means a communication network constructed or operated by the franchisee and generally available for voice and data traffic only to non-residential subscribers.

**Live origination point and/or upstream feed** means a connection to the cable system, with associated necessary signal insertion equipment, which is provided to allow programming to be transmitted from the origination point location upstream to the headend and from there downstream to the subscribers over one or more access channels.

**Maximum permitted rate** means the highest amount a franchisee can charge a subscriber for cable television service as approved by the Cable Rate Regulation Board.

**Other programming service** means information that a franchisee makes available to all subscribers generally.

**Outlet** means an interior receptacle that connects the franchisee network to a subscriber's home wiring cable.

**Parent** means when used in reference to a franchisee, any person holding direct or indirect ownership or control of twenty percent (20%) or more of the rights of control of the franchisee; and any person holding such ownership or control of a parent to the franchisee.

**Pay cable and/or premium service** means optional additional services, provided to subscribers at a monthly charge in addition to the charge for basic service.

**Pay-per-view** means single program(s) offered by the franchisee for which a subscriber selects and pays a separate fee to view. The programming would not be available to subscribers who do not choose to pay for viewing. Examples are music, sports events, movies, and video music clips.

**PEG** means the acronym for Public, Educational, and Governmental access channels. Any channel(s) made available for the presentation of programming originated by the Town, or its authorized representative(s).

**Program** means any audible, visual or facsimile signal, message, graphics, data or communication of any kind transmitted on the cable system whether analog or digital.

**Programming and/or video programming** means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

**Public buildings and grounds** means all public schools, parks, police and fire stations, public libraries, recreation facilities, and any other buildings owned or leased by the Town.

**Service tier** means a category of cable service or other services provided by the franchisee and for which a separate rate is charged by the franchisee.

**Signal** means any transmission of electromagnetic or optical energy that carries cable services from one location to another.

**Street and/or public way** means the surface of, and the space above and below, any public street, highway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Town in the Town which entitles the franchise to the use thereof for the purpose of installing, operating, repairing, and maintaining the cable system. "Street" or "public way" also means any easement now or hereafter held by the Town within the Town for the purpose of public travel, or for utility or public service use dedicated for public travel, or for utility or public service use dedicated for compatible uses, and includes other easements or rights-of-way as do within their proper use and meaning entitle the franchise to the use thereof for the purposes of installing or transmitting the franchise's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the cable system. Reference herein to "public way" or "street" may not be construed to be a representation or guarantee by the Town that its property rights are sufficient to permit its use for any purpose, or that the Town gains or is permitted to exercise any rights to use property in the Town greater than those already possessed by the Town.

**Subheadend** means a signal distribution point for part of the cable system linked to the headend by fiber optic cable, coaxial super trunk or microwave, and also referred to as a "hub or node."

**Subscriber** means any person or user of the cable system who lawfully receives services from the franchisee.

**Two-way capability** means the ability to transmit audio, video and digital signals upstream and downstream on the cable system.

**Upstream channel** means a channel over which signals travel from an authorized location to a cable system distribution point.

**Video programming** means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, superstations, satellite-delivered cable networks and pay cable, whether the subscriber fee is on a per-channel or per-program basis.

**Worksheets** means FCC approved worksheets accompanying a rate filing to the Town. Worksheets are used to calculate a franchisee base rate per channel. The base rate per channel must not exceed the adjusted benchmark channel rate.

#### **7.1.4 Cable Television Rate Regulation Board.**

This title is administered by the cable television rate regulation board which consists of five members and one alternate appointed by the Town Council from the qualified voters of the Town. Members serve for terms of three years and until their successors are appointed and qualified. Members may be removed by the Town Council for cause after notice and hearing.

#### **7.1.5 Rate Setting Procedures.**

A. Cable Operator Submission. Within thirty (30) days of the date of the notice from the franchising authority to the cable operator, the cable operator must file its rate justification with the franchising authority.

B. Franchising Authority Response. The franchising authority must make a decision on the rate request within thirty (30) days after the cable operator submits its rate justification. The rates proposed by the cable operator automatically take effect after that thirty (30) day period unless the franchising authority issues a statement that it needs additional time to make its decision.

If the franchising authority decides that it needs longer than the initial thirty (30) day period to consider the rate request, it may issue a statement to that effect. Such statement may provide for up to ninety (90) additional days to review a rate request based upon a benchmark approach and up to one hundred fifty (150) days to review a rate request based upon a cost of service approach.

If the franchising authority cannot reach a decision by the end of the extended period set forth in the preceding paragraph, the rates proposed by the cable operator go into effect, subject to refund. If the franchising authority intends to seek refunds, it must issue an order to the cable operator prior to expiration of the time period for response, notifying the cable operator to keep accurate records with respect to rates.

C. Public Hearing Required. A public hearing is to be held in connection with every rate setting proceeding. At least ten (10) days prior to the hearing date, the Town clerk must publish a notice of the hearing in a newspaper of general circulation in the Town. The notice must identify the name of the cable operator, indicate that a rate change has been requested, and identify the time and place of the public hearing.

D. Proprietary Information. The franchising authority may require the cable operator to furnish proprietary information in connection with any rate setting proceeding.

E. Calculation of Rates and Refunds. In setting basic tier rates and charges, and in setting any refunds, the franchising authority is governed by the FCC Rate Regulations as amended. The FCC Rate Regulations govern notwithstanding any different or inconsistent provisions in the franchise agreement.

F. Decision of Franchising Authority. The franchising authority must issue a written rate decision with appropriate findings and conclusions if the franchising authority:

1. Disapproves, in whole or in part, the initial rate scheduled or a proposed rate increase; or
2. Approves the initial rate or proposed rate increase over the objection of an interested party. Public notice must be given of any such written decision, which must include release of the text of the written decision to the public.

No written decision is required to approve an unopposed existing or proposed rate.

G. Appeals. The FCC has exclusive jurisdiction to hear appeals challenging whether the franchising authority's decision is consistent with the 1992 Cable Act or any applicable FCC rules. Any participant in a franchising authority's rate regulation proceeding may appeal the franchising authority's decision on such grounds to the FCC within thirty (30) days of release of the public notice required under subsection F of this section.

Appeals on grounds other than those stated in the preceding paragraph may be made to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

#### **7.1.6 Execution of Documents—Authority Conferred.**

The Town Manager is authorized to execute on behalf of the Town and file with the FCC such certifications, forms or other instruments as are now or may hereafter be required by the FCC Rate Regulations in order to enable the Town to regulate basic service rates and charges

## **Chapter 7.2 CABLE TELEVISION FRANCHISE**

### **7.2.1 Short Title.**

This chapter is known as the "Kittery Cable Television Franchise Ordinance" and will be referred to herein as "this title." It is adopted by the municipal officers of the Town of Kittery, Maine (the "Town") pursuant to State of Maine Statutes 30-A M.R.S. §3001 thru §3010.

### **7.2.2 Policy and Purpose—Franchise Agreement Requirement.**

A. Purpose, Authority, State Policy and Cable Television Ordinance. It is the policy of the state of Maine (the "State") and the Town, with respect to cable television:

1. To affirm the importance of municipal control of franchising and regulation in order to ensure that the needs and interest of local citizens are adequately met;
2. That the Town, when acting to displace competition with regulation in the area of cable television, proceed according to the judgment of the municipal officers as to the type and degree of regulatory activity considered to be in the best interest of its citizens;

3. To provide adequate statutory and ordinance authority to the Town to make franchising and regulatory decisions to implement this policy and to avoid the cost and uncertainty of lawsuits challenging that authority; and

4. That the Town's municipal officers must enact an ordinance governing cable franchising and regulation of cable television systems using public ways before granting any franchise(s).

B. Ordinance Effective Date. This title is effective immediately upon adoption by the municipal officers.

C. Public Hearing. Any public hearing, pertaining to activities of the franchisee and the Town, and unless otherwise provided in this title, may be held on seven days written and publicly advertised notice, at which time the franchisee and the public are to be given an opportunity to be heard.

D. General Authority. No person, firm or corporation may construct, install, maintain or operate within the Town a cable system unless a franchise agreement has first been obtained pursuant to the provisions of this title and unless said franchise agreement is in full force and effect. The provisions of this title and any franchise agreement executed in accordance with this title is to be liberally construed in favor of the Town and its cable subscribers in order to effectuate their purposes and objectives and to promote the public interest. Any franchise agreement is governed by and construed in accordance with the laws of the state of Maine, federal regulations and laws, and ordinances of the Town.

E. Grant of Renewal Franchise. Pursuant to the authority of 30-A, M.R.S. §3001 thru §3010, and subject to the terms and conditions set forth herein, and the franchise agreement, the Town Council, in its statutory role as the issuing authority of the Town, may grant a non-exclusive, revocable cable television agreement to any cable operator or its successors for the purposes of constructing, installing, upgrading, operating, and maintaining a cable system within the Town.

### **7.2.3 Franchise Agreement.**

#### **7.2.3.1 Rights to Contract.**

The Town may contract on such terms, conditions, and fees as are in the best interest of the Town and its residents with one or more cable operator for the operation of a cable system within the Town, including the granting of non-exclusive franchise agreement(s) for the construction, installation, upgrading, maintenance and operation thereof.

#### **7.2.3.2 Public Inspection.**

The franchise agreement application(s), including renewal applications, and any submittals in response to a request for proposals or solicitation of bids and related documents, are public records. Upon the filing of such documents, the Town must provide reasonable notice to the public that such documents are open to public inspection during reasonable business hours.

### **7.2.3.3 Conditions.**

Any franchise agreement between the Town and the cable operator is to contain, but is not limited to:

1. **Service Area.** The service area consists of all subscriber residential units or dwellings and all commercial units. The cable system must pass all residential and commercial units located on public ways in existence at the time a franchise is renewed.
2. **Future Service Area.** The franchisee must install cable for residential subdivisions in a timely fashion. The franchisee may negotiate with the builder or utility to use joint service conduits. The Town requires developers to give timely notice of trenching and undergrounding construction to the franchisee.
3. **Drop or Subscriber Connection.** Within the time specified herein, the franchisee must connect the cable system to a dwelling or commercial unit at the standard installation charge provided the dwelling or unit is within two hundred (200) feet of the nearest feeder cable. This installation must provide an outlet at the dwelling or unit to allow for the internal wiring to be connected to the drop cable. The franchisee may inspect the internal wiring of a dwelling or commercial unit.
4. **Line Extension.** A time certain statement for the start of installation and completion of line extension (feeder and/or trunk cable) after notification to conduct such work by either the Town or person.
5. **Renewal Period.** The renewal period of a franchise may not be less than five nor more than ten (10) years.
6. **Subscriber Complaints.** Procedures for the investigation and resolution of subscriber complaints by the franchisee.
7. **Consumer Rights and Protection.** Every franchisee must agree and comply to the consumer rights and protection pursuant to 30-A M.R.S. §3010, and any amendments thereto and the requirements of this title.
8. **Penalty Provisions.** Penalty provisions are in accordance with this title and the franchisee must be compelled and enforced to comply with these provisions.
9. **Public, Education, and Governmental (PEG) Access.** A provision for free access to, and facilities to make use of, one or more local PEG Access Channels, grant funding to support PEG Access facilities and equipment and the installation and maintenance of Origination Points at designated public buildings. After the third year of the franchise agreement, the Town may request an additional PEG Access Channel.
10. **Institutional Network (I-Net).** The Town may require, as a condition of granting of a franchise agreement or renewal, that the franchisee provide an institutional network. The specific institutional network requirements are to be detailed in the franchise agreement.
11. **Fees Other Than Franchise Fee.** A provision for payment by the franchisee of the Town's expenses incurred in connection with the award and negotiation of the franchise agreement and all activities and processes connected therewith, including consultants' and attorneys' fees and expenses, for which payment must be made within thirty (30) days of the effective date of the franchise agreement.
12. **Other.** Any other terms and conditions that are in the best interest of the Town and/or as set forth herein.

## **7.2.4 Town's Retained Rights and Authority.**

### **7.2.4.1 Right to Grant Additional Franchises.**

A franchise agreement is non-exclusive and will not explicitly or implicitly preclude the issuance of other franchises to operate cable systems within the Town. The Town expressly reserves the right to grant other such franchise agreements in the Town on such terms as it deems appropriate and to operate a Town-owned cable system. No privilege or power of eminent domain is bestowed upon the franchisee by the granting of a franchise.

### **7.2.4.2 Exercise of Police and Regulatory Power.**

All rights and privileges granted in any franchise agreement are subject to the police power of the Town to adopt and enforce local laws, ordinances, bylaws, rules and regulations necessary to the health, safety and general welfare of the public. Expressly reserved to the Town is the right to adopt, in addition to the provisions of any franchise agreement, this title and any other existing laws, ordinances and regulations (collectively "laws"), such additional laws as it may find necessary in the exercise of its police power. Any conflict between the terms of any franchise agreement and any present or future exercise of the Town's police and regulatory powers must be resolved in favor of the Town's police and regulatory powers.

### **7.2.4.3 Use of Public Ways.**

The right to use and occupy the street and public ways and public places granted in any franchise agreement is not exclusive, and the Town reserves the right to grant similar or other uses of the said streets, public ways and public places to any person at any time during the term of any franchise agreement.

### **7.2.4.4 Conflict with Public Works.**

The rights and privileges granted to the franchisee in any franchise agreement must not be in preference or hindrance to the right of the Town or any other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works or public improvement. Should the franchisee's cable system in any way interfere with the construction, maintenance or repair of such public works or improvements, the franchisee must, at its own expense, protect or relocate its cable system or part thereof, as directed by the Town or other authority having jurisdiction.

### **7.2.4.5 Removal and Relocation.**

The Town has the power at any time to order and require the franchisee to remove or relocate any pole, wire, cable or other structure machinery or equipment located within a public way that is dangerous to life or property. In the event that the franchisee, after notice, fails or refuses to act within a reasonable time, the Town has the power to remove or relocate the same at the sole cost and expense of the franchisee.

### **7.2.4.6 Acts at Grantee's Expense.**

Any act that the franchisee is or may be required to perform under this title, a franchise agreement, or applicable laws is performed at the franchisee's expense, unless expressly provided to the contrary in this title, the franchise agreement, or applicable laws.

## **7.2.5 Bonds, Indemnifications and Insurance.**

### **7.2.5.1 Performance Bond to Town.**

Concurrent with the award of a franchise, the franchisee must file with the Town clerk an irrevocable performance bond running to the Town in the amount of at least one hundred thousand dollars (\$100,000) with a company surety satisfactory to the Town and authorized to conduct business in the state in order to secure and guarantee the faithful performance by the franchisee of all of its obligations under this title and the franchise. The franchisee shall maintain the bond in full force and effect during the life of the franchise. The bond must be so conditioned that in the event the franchisee fails to comply with any one or more provisions of this title of the franchise, then there is recoverable jointly and severally from the principal and surety any damage or loss, penalty or cost suffered or incurred by the Town, including penalties assessed against the franchisee, as a result thereof, including attorneys' fees and costs of any action or proceeding and including the full amount of any compensation, indemnification, cost of removal or abandonment of any property or other costs which may be in default up to the full principal amount of such bond. Not less than thirty (30) days prior notice to the Town must be provided of the franchisee's or the surety's intention to cancel, materially change, or not to renew the performance bond. The total amount of the bond is forfeited in favor of the Town in the event that the franchisee:

1. Abandons the cable system or any part thereof at any time during the term of the franchise agreement;
2. Sells, assigns or transfers control of the franchise agreement or its cable system serving the Town or there is a change in ownership or control of the franchisee, except in compliance with the provisions of federal and state law, this title and the franchise agreement;
3. Fails to satisfactorily restore pavement, sidewalks, and other improvements in accordance with the franchise agreement and the satisfactory operation of the cable system in accordance with the terms and conditions of the franchise;
4. The franchise agreement is revoked as provided herein.

### **7.2.5.2 Bond Forfeited.**

In the event that any portion of the performance bond is forfeited for any reason, the franchisee is required to post an additional bond in an amount equal to the forfeiture within thirty (30) days of the date of the forfeiture.

#### **7.2.5.3 Hold Harmless Agreement.**

The franchisee must indemnify and hold harmless the Town, its councilors, officers, boards, commissions, agents, and employees against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including but not limited to damages to Town property, damages arising out of copyright infringements, and damages arising out of any failure by the franchisee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the franchisee's cable television system), costs or liabilities (including costs or liabilities of the Town with respect to its employees), of every kind and nature whatsoever, including but not limited to damages for injury of death or damage to person or property, and regardless of the merit of any of the same, and against all liability to others, and against all loss, cost, and expense resulting or arising out of any of the same, including any attorney fees, accounting fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to the construction, operation, maintenance, repair or service of the franchisee's cable system in the Town or the exercise or the enjoyment of any franchise hereunder by the franchisee, or the granting thereof by the Town.

#### **7.2.5.4 Defense of Litigation.**

The franchisee must:

1. At the sole risk and expense of the franchisee, upon demand of the Town, made by and through the Town attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the Town, its councilors, officers, boards, commissions, agents, or employees, and arising out of or pertaining to the construction, operation, maintenance, repair or service of the franchisee's cable system in the Town or the exercise or the enjoyment of a franchise, or the granting thereof by the Town;
2. Pay and satisfy and cause to be paid and satisfied any judgment, decree, order, directive or demand rendered, made or issued against the franchisee, the Town, its councilors, officers, boards, commissions, agents, or employees in any of these premises; and such indemnity exists and continues without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance required hereunder, or otherwise; provided, that neither the franchisee nor Town make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit, or other proceeding, without first obtaining the written consent of the other.

#### **7.2.5.5 Insurance.**

The franchisee must carry insurance throughout the full term of the franchise agreement with the Town with an insurance company qualified to do business in the state sufficient to protect it and the Town from any claims which may arise directly or indirectly or result from the franchisee's ownership, construction, repair, operation or maintenance of the franchisee's cable system serving the Town, whether such activities are performed by the franchisee, or by anyone for whose acts the franchisee may be liable, under the following policies:

1. Workers' compensation and any other legally required employee benefits supplied in such amounts as required by law;
2. Property insurance, all risk, replacement cost basis, on all insurable franchisee assets in the Town;
3. Comprehensive general liability insurance supplied in the following amounts:
  - a. Damage to property no less than one million dollars (\$1,000,000) as to any one occurrence, and
  - b. Injury or death to one person no less than two million dollars (\$2,000,000).
4. Excess liability coverage not less than six million dollars (\$6,000,000) in umbrella form.
5. Contract liability or general tort insurance against all claims arising out of the operation of motor vehicles in the amount of not less than one million dollars (\$1,000,000).
6. All insurance coverage, including workers' compensation, maintained throughout the period of this franchise agreement. All expenses incurred for said insurance are the sole expense of the franchisee.
7. The Town is to be named as an additional insured on all liability insurance.
8. Policies will contain a provision that the Town will receive thirty (30) days written notice prior to any cancellation.

#### **7.2.5.6 Insurance Files.**

The franchisee must keep on file with the Town current certificates of insurance reflecting all required coverage, and upon written request of the Town provide the Town with copies of all insurance policies in effect during the franchisee period. The franchisee must not cancel any required insurance policy without submission of proof that the franchisee has obtained alternative insurance satisfactory to the Town that complies with this title.

#### **7.2.5.7 Non-Waiver.**

Neither the provisions of this section, nor any bonds accepted by the Town pursuant hereto, nor any damage recovered by the Town there under, may be construed to excuse unfaithful performance by the franchisee or limit the liability of the franchisee under this title or the franchise agreement for damages, either to the full amount of the bond or otherwise.

### **Chapter 7.3 CABLE TELEVISION FRANCHISE REQUIREMENTS**

#### **7.3.1 Application.**

Any application for a new cable television franchise or renewal of a franchise in the Town is to contain the following information:

1. The name, addresses, and telephone numbers of the applicant, both the regional and national;
2. A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following and to whatever extent required by the Town:
  - a. The names, residence and business addresses of all officers and directors;

- b. The names, residence and business addresses of all officers, persons and entities having, controlling, or being entitled to have or control one percent or more of the ownership of the applicant;
  - c. A detailed and complete financial statement of the applicant, and its subsidiaries, prepared by a certified public accountant, for the fiscal year next preceding the date of the application hereunder and certifying that the applicant has available sufficient free, net and uncommitted cash resources to operate the proposed cable system in the Town.
3. A detailed description of the proposed plan of operation of the applicant that includes, but not be limited to, the following:
- a. A statement or schedule setting forth all proposed classifications of rates and charges to be made against all subscribers, including but not limited to residential dwellings, commercial establishments, apartments, housing projects (both public and private), hotels, motels, and other establishments. Additionally, all rates and charges as to each of said classifications, including installation charges, service charges, deposit agreement (if any) and all other rates and charges to be made;
  - b. A detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant. In no event are said operational and performance standards to be less than those contained in Title 47 C.F.R. Subpart K (Sections 76.601, et seq.), of the Rules and Regulations of the FCC, as amended in the future, and in addition comply herein.
4. A detailed statement setting forth in its entirety the imposed cable system design. Such statement is to include proposals concerning system architecture, channel capacity, channel uses, access, programming facilities, franchisee studio location, point to point service, two-way capability, subscriber privacy, and interconnection.
5. Such other information as may be required by the Town for a new or renewal franchise

### **7.3.2 Contract term, Termination and Renewal.**

#### **7.3.2.1 Term.**

Each franchise must contain the following provisions:

- 1. Any franchise awarded by the Town under this title is to be for a term of not less than five years nor more than ten (10) years. The franchisee has no automatic right to renewal of a franchise, but any renewal is in the sole discretion of the Town acting in accordance with any applicable provisions of Maine and federal law;
- 2. Any renewal of a franchise is to be upon such terms and conditions as herein stated, and the franchisee has satisfied the conditions of this title, and provided the franchisee has fulfilled all terms and conditions of any previous contract. Prior to any renewal or extension of the franchise, franchisee must satisfy the Cable Television Rate Regulation Board (the “board”) at a public hearing that it has maintained or will improve the cable system to remain abreast of all highest standards of broadcast, repair and service restoration, programming, rates, customer service, billing and quality;

3. Notwithstanding any other provision of this title or any franchise agreement, the Town may from time to time extend the franchise agreement by resolution for a period not to exceed six months.

#### **7.3.2.2 Termination.**

The Town may revoke or terminate any franchise awarded pursuant to the provisions of this title or may impose reasonable penalties upon thirty (30) days written notice to the franchisee, and after public hearing in the event that the franchisee:

1. Violates any material provision of its franchise agreement or any rule, order or determination of the Town made pursuant to the franchise agreement or this title where such violation remains uncured for a period of thirty (30) days following notice to the franchisee by the Town that such violation is deemed to exist;
2. Attempts to evade any material provision of its franchise agreement or practices any fraud or deceit upon the Town or subscribers residing in the Town;
3. Accumulates, within any period of six consecutive months, penalties imposed under this title or a franchise agreement, in the aggregate amount of ten thousand dollars (\$10,000) for failure to perform any of its other obligations;
4. Has a petition under the Bankruptcy Code filed by or against it, and the franchisee fails to have the petition dismissed within sixty (60) days;
5. Has a receiver, trustee or liquidator appointed for all or part of the franchisee's assets;
6. Becomes financially insolvent or makes an assignment for the benefit of creditors;
7. Continuously or repeatedly violates any provisions of its franchise agreement or any orders or rulings of any regulatory body having jurisdiction over the franchisee; or
8. Fails to provide or maintain in full force and effect the insurance coverage and the performance bond as required by this title and the terms of the franchise agreement.

#### **7.3.2.3 Revocation Public Hearing.**

Prior to revoking a franchise, the Town must hold a public hearing, on thirty (30) days written notice, at which time the franchisee and the public are to be given an opportunity to be heard. Following the public hearing, the Town may determine to revoke the franchise based on the information presented at the hearing and other information of record. If the Town determines to revoke a franchise, it must issue a written decision setting forth the reasons for its decision. A copy of such decision must be transmitted to the franchisee. Any appeal or challenge to a revocation or termination of a franchise agreement is to the York County Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure.

#### **7.3.2.4 New Franchise and/or Renewal Public Hearing.**

Before authorizing the issuance of any new franchise and/or renewal, the Town must review the applicant's character, financial and technical qualifications, the proposed agreement's ability to meet current and future cable-related needs and interests, and the adequacy and feasibility of the applicant's qualifications to operate a cable system within the Town, and the Town must conduct a public hearing. Prior to conduct of this public hearing the Town Council must be provided with the minutes of the board meeting in order to assist in the conduct of this public hearing.

### **7.3.3 Ownership of Cable System.**

#### **7.3.3.1 Franchisee Ownership.**

The franchisee must be at all times during the term of any franchise agreement the full and complete owner of, and have complete possessory rights to, all facilities and property, real and personal, of the cable system, provided that franchisee is not precluded from entering into any pledge, mortgage or collateralization of any assets of the cable system in conjunction with any financing or refinancing in the normal course of franchisee's business. Nothing herein may be construed to prevent franchisee from acquiring an interest in such property as a lessee, provided that the terms of such lease provide for continuity of possession by the franchisee throughout the term of the lease.

#### **7.3.3.2 Restriction on Transfer or Assignment.**

1. The franchisee may not enter into any transaction, including but not limited to any transfer, sale or assignment, concerning ownership or control of the franchisee's cable system in the Town without thirty (30) days prior written notice to the Town and without prior written approval of the Town. For purposes of this title "a change of control" includes any transaction that changes effective majority control of twenty percent (20%) or more of the ownership of the franchisee.
2. In the event the franchisee applies to the Town for approval of or consent to a sale, transfer or change of control of a franchise agreement or of the cable system serving the Town or a transfer of control of the franchisee, the franchisee must include with the application complete responses to the informational requests of this title, including any and all items required by the terms of the franchise agreement. The applicable deadline for the Town to act upon the request for approval of or consent to the transaction does not begin to run until the franchisee or the proposed transferee provides the Town with such complete responses. In making a determination of whether to approve or reject a sale, assignment, transfer or disposal of the cable system or this franchise, the Town considers, but is not limited to, the following criteria:
  - a. The experience of the proposed transferee or assignee (including conducting an investigation of its service record in other communities);
  - b. The financial, technical and legal qualifications of the proposed transferee or assignee and its financial and technical capacity to comply with the terms of any franchise agreement;
  - c. If requested by the Town, submittals from the proposed transferee or assignee, on what, if any, changes it intends to make in the operation and maintenance of the present cable system;
  - d. The corporate connection, if any, between the franchisee and the proposed transferee or assignee;
  - e. Whether operation by the transferee or assignee or approval of the transfer would adversely affect subscribers, the Town's interest under this title, the franchise agreement or other applicable law, or make it less likely that the future cable-related needs and interests of the community would be satisfied at a reasonable cost; and
  - f. Any other aspect of the proposed transferee's or assignee's background which could affect the health, safety, and welfare of the citizenry of the Town as it relates to the operation of the cable system.

3. If the Town determines that franchisee's application does not meet any one of the foregoing criteria, the Town may deny the application.
4. If, in the Town's opinion, information furnished to it in connection with a request for approval of a transfer or change of control pursuant to this title is not sufficient to enable the Town to make a fully informed decision with respect thereto, it may request such additional information concerning the proposed transfer and transferee as the Town may determine. All such requested information must be furnished to the Town within forty-five (45) days after receipt by franchisee of such a request from the Town. Notwithstanding any other provision of this title, the Town is under no obligation to act on any request for approval of any such transfer unless and until it receives all the information requested.
5. The consent or approval of the Town to any transfer, assignment, change of control, lease sublease or mortgage of any franchise agreement granted to the franchisee does not constitute a waiver or release of the rights of the Town in and is, by its terms be expressly subordinate to the terms and conditions of this title and any franchise agreement.
6. The franchisee must reimburse the Town for all reasonable expenses (including legal, technical and financial consulting expenses) incurred by the Town in reviewing and acting upon a request by franchisee for approval of any future sale, transfer or change of control of the franchisee or the cable system serving the Town or a change of control of franchisee. Reimbursement provided under this section does not constitute the franchisee fee within the meaning of the Cable Act.

#### **7.3.3.3 Foreclosure.**

Upon the foreclosure, other judicial sale or reversion of all or a substantial part of the cable system, the franchisee must notify the Town of such fact within five days of its occurrence, and such notification will be treated as a notification that a change in ownership of the cable system has taken place, and the provisions of this title governing Town approval of such change apply.

#### **7.3.3.4 Receivership.**

In the event of the appointment of a receiver or trustee, or debtor in possession, to take over and conduct the business of the franchisee, or a parent, whether in receivership, reorganization, bankruptcy, or other action or proceeding, the franchisee must notify the Town of such fact within five days of its occurrence, and such notification will be treated as a notification that a change in control of the franchisee has taken place, and the provisions of this title hereof governing Town approval of such change apply. The term "bankruptcy" as used herein includes an assignment for the benefit of creditors and a petition for rearrangement or other similar procedure.

### **7.3.4 Fees.**

#### **7.3.4.1 Franchise Fee.**

As compensation for the rights and privileges granted by any franchise awarded pursuant to the provisions of this title the Town may access a franchise fee of up to five percent of the franchisee's gross annual revenues under the franchise agreement. The franchisee fee will be specified in the franchise agreement and may be changed by the Town subject to the five percent cap on ninety (90) days notice to the franchisee. In computing amounts due the Town with respect to advertising revenue and other revenue not specifically attributable to all

subscribers in the Town, such revenue is to be attributed to the Town on the basis of the number of subscribers in the Town as a percentage of the total number of subscribers served by the franchisee which serves the Town and other communities, using, for the subscribers and total system subscribers, respectively, the average numbers of subscribers for the period for which payment is made.

#### **7.3.4.2 Method of Computation.**

Payments due the Town under the terms of this title are to be computed semi-annually as of June 30 and December 31 for the preceding six months and are to be paid on or before the forty-fifth (45) calendar day from each said computation date at the office of the Town treasurer during regular business hours.

1. The Town must be furnished a statement with each payment, certified as correct by the franchisee and prepared by a certified public accountant, reflecting the total amount of gross annual revenues generated by all activities within the Town, and the above charges, deductions and computations, for the six month payment period covered by the payment. The franchisee must prepare and maintain financial information and records in accordance with generally accepted accounting principles and generally accepted auditing standards in the cable television industry.
2. At the Town's option, the information provided by the franchisee may be subject to audit by the board and/or an outside firm of certified public accountants selected by the Town. In the event an audit is performed it will be conducted at the headend office used by the franchisee to provide cable service to the Town. Any such audit is at the Town's expense except unless such audit discloses an underpayment of any franchise fees payable for the period of the audit, in which event the franchisee must reimburse the Town for the expense of such audit.

#### **7.3.4.3 Rights of Recomputation.**

No acceptance of any payment may be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a franchise fee under this title or for the performance of any other obligation hereunder.

#### **7.3.4.4 Failure to Make Required Payment.**

Failure to pay the franchisee fee on a timely basis is a violation of this title and is a violation of a material provision of the franchise agreement for purposes of the termination provisions of this title and any franchise agreement. Interest shall accrue on any and all overdue franchise fees at the rate of twelve percent (12%) simple interest per annum. Failure to pay any fees required by this title results in automatic default of the franchise granted, and reinstatement thereof may be had only upon resolution by the Town Council, and payment of the delinquent fee or fees plus any interest or penalties as may be required by resolution.

#### **7.3.5 Penalties.**

See Section 7.3 of this title, which is incorporated into this chapter.

#### **7.3.6 Construction and Operation of Facilities.**

**7.3.6.1 Design.**

The cable system serving the Town must be designed and constructed for technical quality in conformance with the highest state of art deployed in the cable television industry. The basic architecture of the system is to recognize the requirements for the transmission of channels, with full bi-directional capacity and activation of all downstream and upstream channels. The system must be capable of providing Maine, National, and Local Interest broadcasting. Examples of Maine Interest are: educational programs, political and administrative programs, state administrative activities, and civic and sporting events.

**7.3.6.2 Emergency Power.**

The cable system must incorporate equipment capable of providing standby powering of the headend and all subheadends for a minimum of four hours and standby powering of all cable hubs or nodes for a minimum of two hours upon failure of the power furnished by the utility to the franchisee.

**7.3.6.3 Subscribers' Antennae.**

In order that subscribers to the cable system have the capability to change from cable reception to home antenna reception, and back, the franchisee is to provide to any subscriber, upon request, an A/B switch, installed at reasonable cost.

**7.3.6.4 VCR/Cable Compatibility.**

In order that subscribers to the cable system have the capability to simultaneously view and tape any channel and set their VCR to record multiple channels remotely, the franchisee is to provide to any subscriber, upon request, an A/B switch, installed at reasonable cost.

**7.3.6.5 Switching.**

Each headend or subheadend of the cable system is to have the capability of accepting programming on the upstream channels of the cable system and simultaneously transmitting such programming on the cable system's downstream channels for downstream transmission to subscribers.

**7.3.6.6 General Construction Requirements.**

In the construction, reconstruction, maintenance, upgrading and repair of the cable system, the franchisee must utilize materials of good and durable quality and perform or cause to be performed all work so associated with the system in a safe, thorough and reliable manner using the highest cable industry practices.

**7.3.6.7 Live Origination Points.**

To facilitate live programming within the Town the franchisee must install origination points (also known as upstream feeds), including any necessary signal insertion equipment, at the Town offices, high school, each middle and elementary school, public parks, ball-fields, public library(s), museum, and media center(s) (to be determined), and such additional public locations identified in the franchise agreement or from time-to-time.

#### **7.3.6.8 Compliance with Regulations.**

All work related to the cable system must comply with all federal, state, and local regulations, laws, and ordinances and the National Electric Code, the National Electrical Safety Code, the National Cable Television Association Standard Code and the National Safety Code.

#### **7.3.6.9 Town's Rights.**

The Town reserves the right to inspect all construction and installation work and to make such tests as it deems necessary to ensure compliance with applicable laws, codes, ordinances and regulations and with provisions of this title and the applicable franchise agreement, and may order corrections of any violations.

#### **7.3.6.10 Restoration of Damage.**

The franchisee, at its sole expense, must restore all damage to property, both public and private, caused by the franchisee. Such restoration must be made as soon as practicable after completion of work necessitating the restoration, and is to be done in a manner approved by the Town or the owner or tenant in possession. In no event can such restoration be made later than ten (10) days, weather permitting. If the franchisee fails to make such restoration on a timely basis, the Town may fix a reasonable time for such restoration and repairs and notify the franchisee in writing of the restoration and repairs required and the time fixed for performance hereof. Upon failure of the franchisee to comply within the specified time period, the Town may cause proper restoration and repairs to be made and the franchisee must reimburse the Town for the reasonable expense of such work upon demand by the Town.

#### **7.3.6.6. Identification.**

The franchisee is to ensure that all of its vehicles are clearly identified to the general public as being associated with the franchisee, and that all of its employees, and the employees of any agents or contractors, who enter upon private property or private ways wear an employee identification card issued by the franchisee, which card bears a picture of said employee and is worn in a conspicuous place.

#### **7.3.6.12 Public Ways Hazards.**

Any openings or obstructions in streets or other municipal or public property made by any franchisee are to be guarded and protected at all times by the placement of adequate barriers, fences, boarding or other protective devices at the sole expense of the franchisee. During the periods of dusk and darkness, the protective devices are to be clearly designated by warning lights.

#### **7.3.6.13 Location of Physical Facilities.**

Within sixty (60) days after the effective date of any franchise agreement, the franchisee must provide the Town with street maps of the Town clearly showing the location of all trunk and feeder runs (indicating underground, where applicable), hubs or nodes, regenerators, multiplexers, distribution points, injection points, modulators, vaults and pedestals, and any such related equipment required to operate the cable system, headend and subheadends. Revised and corrected maps are to be submitted to the Town not later than ninety (90) days after such changes or additions are made.

**7.3.6.14 Location of Construction.**

All lines, cables and distribution structure, and equipment, including poles and towers, erected, installed or maintained by any franchisee within the Town must be located so as not to obstruct or interfere with the proper use of streets and public ways and to cause minimum interference with the rights of property owners who abut any of the said streets and public ways, and not to interfere with existing public utility installations. A franchisee may not place new poles, towers or other obstructions in streets or public ways, or relocate existing poles, towers or other obstructions, without first obtaining the Town's approval, which approval is not to be unreasonably withheld. A franchisee may have no vested right in any location, and the franchisee must remove such construction at its own cost and expense whenever the same restricts or obstructs or interferes with the operation or location or any future operation or location of said streets or public ways.

**7.3.6.15 Grade or Location Changes.**

If at any time during the term of a franchise agreement the Town elects to alter, or change the grade or location of any street, or engage in any construction, reconstruction, widening, repairs or other public works in, on or under the streets, any franchisee must, upon reasonable notice by the Town, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures ("fixtures") at its own expense, and in each instance comply with the Town's standards and specifications.

**7.3.6.16 No Interference.**

The franchisee may not place fixtures above or below ground where the same will interfere with any gas, electricity, telephone, water hydrants, or other utility use, and all such fixtures placed in or upon any street are to be so placed as to comply with all requirements of the Town or other applicable authority, and fully comply with local laws. The cable system must be constructed, operated and maintained so that there will be no objectionable interference with television reception, radio reception, telephone communications or other electronic installations in the Town or with the operation of any public fire, police, rescue or safety communications system. Should any such interference occur, the franchisee is to promptly eliminate it.

**7.3.6.17 Temporary Relocation.**

The franchisee may, on request of any person holding a permit issued by the Town or other appropriate authority, temporarily move its fixtures to permit the moving or erection of buildings or other objects, with the expense of any such temporary removal to be paid in advance by the person requesting same, and the franchisee must be given reasonable notice to arrange for such temporary relocation. A franchisee shall bear any expense to temporarily move its fixtures to permit the moving or erection of publicly owned or constructed buildings or other public infrastructure.

**7.3.6.18 Drops.**

In areas where the cable distribution is located underground, drop connections to subscriber's structure must be underground; in other areas the drop connection may be aerial unless the subscriber requests underground installation and elects to pay the cost thereof. Insofar as

practicable, the franchisee shall adhere to the subscriber's desire with regard to point of entry of the drop connection into the structure.

**7.3.6.19 Contractors, Subcontractors and Associates.**

All contractors, subcontractors and associates of the franchisee must be properly licensed under all applicable federal, state and local laws. The franchisee is solely and completely responsible for all acts or omissions of any such contractor, subcontractor or associates, or any employee or agent of any such contractor, subcontractor or associate in the construction, reconstruction, installation, maintenance, operation or removal of the franchisee's cable system.

**7.3.6.20 Lockout Key.**

The franchisee must make available to any subscribers so requesting, for lease or sale, a "parental control device" or "lockout key" which will permit the subscriber, at his or her option, to eliminate comprehensible reception of any or all of the basic service or pay cable channels. When requested, a lockout key must be installed within five days of request.

**7.3.7 Operation, Service and Maintenance of Cable System.**

**7.3.7.1 Safety and Service.**

The franchisee shall construct, maintain and operate its cable system in accordance with the highest industry safety practices and must render efficient service to subscribers during the term of this franchise agreement.

**7.3.7.2 Privacy.**

The franchisee must maintain due vigilance with regard to possible abuses of the right of privacy of any subscriber, programmer or resident resulting from any device or signal associated with the cable system, and take all reasonable steps necessary to prevent and terminate any such abuses should they occur. The franchisee must comply with all applicable federal, state and local laws respecting subscriber privacy and adhere to applicable industry codes of conduct that promote or enhance subscriber privacy.

**7.3.7.3 Monitoring.**

Neither a franchisee nor any of its officers, employees or agents may, or permit any other person to, tap, monitor or arrange for the tapping or monitoring of any subscriber's drop, outlet or receiver for any purpose whatsoever other than legitimate technical testing, monitoring for theft of service or monitoring of subscribers' service status, without the prior written consent of all affected parties. A franchisee must report to the affected parties and all appropriate authorities any instances of monitoring or tapping of the cable system, or any part thereof, of which it has knowledge, whether or not the cable operator has authorized such activity.

The franchisee may not record, retain or provide any information transmitted between any subscriber and any third party, except as herein allowed. The franchisee must destroy all subscriber information of a personal nature after a reasonable period of time except as authorized not to do so by the affected subscriber.

#### **7.3.7.4 Subscriber Lists or Information.**

The franchisee must:

1. Not collect, store, use or make available to any third party data relating to individual subscribing households without first giving the subscriber an opportunity to remove his or her name from the franchisee's list of subscribers, unless such disclosure is necessary to conduct cable related business (for example, mailing out bills and guides or a collection service);
2. Provide annual notice to each subscriber that the franchisee has authorized a third party performing services for the franchisee to use its subscriber list;
3. Upon written request, a subscriber may examine all records maintained by the franchisee relating to the subscriber's account. The franchisee is to promptly correct any errors upon discovery.

#### **7.3.7.5 Technical Standards.**

All signals carried on a cable system are to be transmitted to subscribers without material degradation and with a quality no less than that prescribed by rules of any federal or state regulatory agencies having jurisdiction. Anything contained in a franchise agreement to the contrary notwithstanding, the technical specifications, operation and performance of the system must, at minimum, conform at all times to the specifications established by any federal or state regulatory agencies having jurisdiction thereof, and such specifications existing on the effective date hereof, whichever is of the higher quality.

#### **7.3.7.6 Performance Testing.**

At such time as the performance monitoring and testing, conducted pursuant to requirements of any federal or state regulatory agencies having jurisdiction, provides evidence that the cable system's transmissions do not meet the prescribed standards, the performance monitoring and testing is to be repeated for all segments of the cable system which do not meet such prescribed standards, upon completion of the necessary repair or adjustment, notwithstanding the lack of such requirement by the federal or state agencies, and a report of the second test submitted to the Town; provided, that the franchisee is not required to furnish any such reports with respect to technical problems discovered in the course of the franchisee's routine maintenance testing, except as may be specifically requested by the Town in each instance. The franchisee is to provide and keep accurately calibrated test equipment on hand at all times for the testing of all services and operational standards outlined in this title and in the franchise agreement.

#### **7.3.8 Services Access and Availability**

The franchisee must:

1. Maintain an office at a location reasonably convenient to subscribers that is open at least fifty (50) hours each week, including, during the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday and 8:30 a.m. to 12 noon, Saturday, exclusive of all state and federal holidays, to allow subscribers to conduct business as specified herein. The franchisee shall ensure that its office meets all applicable access requirements of the Maine Human Rights Act and the Americans with Disabilities Act, and all other applicable federal and state laws and regulations.

a. The phone must be answered by a customer service representative at least during the hours for which the office is open for business and be capable of receiving complaints, service calls, program guide inquiries, billing explanations and adjustments, and such other cable service information as may be required (for example, pay-per-view, addressable converter programming, etc.).

b. After the hours specified herein the franchisee must arrange for the phone to be answered so that customers can register complaints and report service problems on a twenty-four (24) hour per day, seven days per week basis, and so that the franchisee can respond to service outages as required herein.

2. Establish a publicly listed toll-free telephone number, and either ensure that its telephone service has TTY and TDD capabilities, or contract with a third party to provide the franchisee with such services.

3. For telephone answering time, not exceed twenty (20) seconds or four rings, and the time to transfer the call to a customer service representative (including hold time) not exceed an additional twenty (20) seconds and this standard met at least ninety percent (90%) of the time during regular business hours noted herein. Any after-hours service is to comply with the same telephone answer time required herein. If requested by the Town, the franchisee is to produce records to establish its compliance with this section.

### **7.3.9 Maintenance and Repair.**

#### **7.3.9.1 System Maintenance Policy.**

The franchisee must promulgate and adhere to a preventative maintenance policy directed toward maximizing the reliability (mean-time-between-malfunctions) and maintainability (mean-time-to-repair) of its cable system with respect to its delivery of cable service to subscribers at or above the highest performance standard for the cable industry. Whenever it is necessary to interrupt service for the cable industry. Whenever it is necessary to interrupt service for the purpose of making scheduled maintenance or repairs, adjustments, installations or other maintenance activities, the franchisee is to do so at such a time as will cause the least inconvenience to subscribers. Except in an emergency, and except for interruptions of five minutes or less which may occur during the course of normal maintenance, and except during the rebuild of the cable system, service is to be interrupted for planned or scheduled maintenance or repairs only between the hours of midnight and 7:00 a.m.

#### **7.3.9.2 Repair.**

The franchisee must maintain a repair department comprising qualified technicians, service vehicles and equipment to provide prompt and efficient repair service within the performance parameters of the highest industry standards.

#### **7.3.9.3 Notice.**

Except in an emergency, and except for interruptions of five minutes or less, the franchisee must give subscribers at least twenty-four (24) hours notice of any interruption of service for purposes of maintenance or repair. In an emergency, the franchisee is to give such notice as is

reasonable in the circumstances. Notice given on the alphanumeric channels on basic service is considered sufficient.

#### **7.3.9.4 Repair Procedure.**

The franchisee must:

1. Have a toll free-listed telephone, TTY, and TDD capabilities in accordance with Section 7.3 herein. The answer time standard specified of Section 7.3 herein applies;
2. Perform service calls within four hours, with a repair crew, to any area outage or subscriber service complaint of outage that occurs between the hours of 7:00 a.m. and 10:00 p.m., of any day, and by no later than the following 11:00 a.m. to any area outage or subscriber service complaint of outage that occurs between 10:00 p.m. and 7:00 a.m.;
3. Respond to subscriber service complaint as herein required and if the subscriber is not satisfied that the problem giving rise to the original complaint has not been resolved, the subscriber may notify the franchisee thereof within twenty-four (24) hours of the original visit, and the franchisee may have an additional period as prescribed by Section 7.3 to correct the problem.
  - a. If after the second service visit the original service complaint is unresolved the subscriber may notify the Town Manager instead of the franchisee for resolution of the complaint. Franchisee will have a period of twenty-four (24) hours after receipt of oral or written notice from the Town within which to make the correction.
  - b. If a service outage complaint occurs as a result of not meeting the time-to-repair requirements of this section, then the service loss rebate and credit herein applies.
  - c. The requirements for maintenance and repair do not apply to subscriber-owned equipment.

#### **7.3.9.5 Rebate for Service Loss.**

In the event service to any subscriber is interrupted for six or more consecutive hours, the franchisee must grant that subscriber a pro rata rebate or credit of the monthly service charge. The franchisee must make such rebate no later than thirty (30) days after the loss of service.

#### **7.3.9.6 Records.**

The franchise must:

1. Maintain records of all oral and written complaints regarding quality of service, equipment malfunctions, billing procedure, employee attitude and similar matters that could reasonably require action on the part of the franchisee. Such records are to show the exact date and time of receipt of all such customer complaints, identifying the subscriber (by name, address and telephone number), the nature of the complaint and the exact time action was taken by the franchisee in response thereto, together with a description of such action;
2. Maintain a record of all whole or partial system outages, including the date, approximate time and duration, type and probable cause of each outage, except for outages caused by routine testing or maintenance. Such records are to be available at the franchisee's local office for at least two years, for inspection by the Town as it may from time to time request, during regular business hours and upon reasonable notice, subject to any privacy restrictions imposed by law;

3. Within ten (10) days after receiving a written request thereof, send a written report to the Town with respect to any complaint. Such report is to provide a full explanation of the investigation, finding(s) and corrective steps taken.

### **7.3.10 Installation.**

#### **7.3.10.1 Installation.**

The franchisee must:

1. Provide service to any subscriber served by a standard aerial drop not later than seven business days after service is requested; service to any subscriber served by a standard underground drop not later than fifteen (15) business days after service is requested unless additional time is required by severe weather or other circumstances outside of franchisee's control;
2. Provide a standard drop, for which the subscriber is charged the franchisee's standard installation fee. A standard drop is a drop running not more than two hundred (200) feet from feeder cable to the subscriber's structure, provided, that any installation which requires franchisee to cross a street underground is considered a non-standard installation.
3. Exert every reasonable effort to commence service to a subscriber served by a nonstandard drop as expeditiously as possible. An aerial drop in excess of two hundred (200) feet in length is considered a non-standard installation.
4. Perform installations and disconnects during at least the hours for which its business office is open for business.
5. Schedule an appointment with a subscriber for an installation, repair or other service call, and if the franchisee fails to arrive at the subscriber's premises within two hours of the scheduled time or scheduled window of time (which window is not to exceed four hours) for reasons not caused by the subscriber, the franchisee may make no charge to the subscriber for any make-up or late installation, and shall apply a minimum twenty dollar (\$20.00) credit to the subscriber's account for any service call as defined above. The above authorized subscriber credit may be increased by the board from time-to-time to reflect inflation. If the appointment to a subscriber's premises is on time and the subscriber is not present then the payment authorized by this section does not apply.

#### **7.3.10.2 Cable Home Wiring and Other Unit Wiring.**

The franchisee is permitted to:

1. Install interior cable home wiring for any residential subscriber and/or units. Equipment such as, electrical outlets, electronic and/or mechanical installations may be provided. All installations must meet the highest industry standards and codes and include state licensing for installers, when required;
2. Inspect pre-installed wiring and equipment to reasonable assure service standards.

### **7.3.11 Regulation, Rates, Programming and Charges.**

#### **7.3.11.1 Regulation by the Board.**

The Town has the right to regulate rates to all subscribers for basic cable service to the extent permitted by federal and state law. The FCC approved Rate Regulation Board is the regulatory body authorized to receive franchisee's rate filing and to regulate rates for the Town in accordance with FCC regulations.

1. At least once each calendar year and at least one hundred and twenty (120) days prior to a requested rate change, the franchisee must provide the Town with the appropriate completed rate forms (worksheets) specified by the Cable Act, FCC regulation, Maine law and local rules or ordinances. At the board's request the franchisee must attend any public hearing held by the board. No new rate may be announced by the franchisee until the board has approved and provided a written notice to the franchisee of the maximum permitted rate. When requested by the board written responses to questions are to be provided in five business days.

2. Certification of Compliance. The franchisee must certify its compliance with prescriptive measures mandated by the FCC or the Town in accordance with FCC, the Town and this title.

#### **7.3.11.2 Rate or Service Discriminations.**

The franchisee may subject no person to any prejudice or disadvantage, in connection with rates, charges, service facilities, rules or regulations. Nothing herein prohibits the establishment of a graduated scale of rates for classified schedules to which any subscribers within such classification are entitled.

#### **7.3.11.3 Connection Charges.**

Subscribers may be assessed no special connection charges other than standard installation charges for cable drops from the cable feed up to two hundred (200) feet. Subscribers requiring drops over this distance may be charged only for the incremental cost of extending the drop beyond two hundred (200) feet. Charges for non-standard installation and cable home wiring and other unit installations shall be per price schedule.

#### **7.3.11.4 Notice of Rates.**

All rates and charges associated with the provision of cable service in the Town are to be in accordance with federal, state and local laws and regulations. A written schedule of all such rates currently in effect, including special and promotional rates, must be available and obtainable in person or by mail upon request during business hours at the franchisee's business office.

1. At least once each calendar year, and subsequent to the approval of the board, the franchisee must provide to each subscriber and the Town a mailed complete written schedule of all services, rates and charges for cable service provided by the franchisee and of the programming offered and channel alignment. Such information is also to be provided to all new or prospective subscribers prior to installation or commencement of service.

2. The franchisee must give subscribers a thirty (30) days advance written notice by mail of any increase in rates. Such notice must include a detailed explanation of downgrade and upgrade policies and the manner in which subscribers may terminate cable service. Subscribers have at least thirty (30) days from receipt of notification of any rate increase to either downgrade service or terminate altogether without any charge.

#### **7.3.11.5 Programming.**

The franchisee must give the Town at least forty-five (45) days prior written notice and each subscriber at least thirty (30) days advance individual written notice by mail of any change, including additions or deletions, or change in channel position, in the programming carried on the cable system, as well as any re-tiering of such programming, and any other changes in the service offered by the franchisee which are not regulated by the board. The franchisee is authorized to offer other programming and services.

1. Upon notifying the Town of a proposed change in programming, the franchisee must, at the request of the Town, attend a public hearing on the proposed programming change to hear comments and concerns of the Town and subscribers.
2. In the event the Town elects to poll subscribers on programming issues or preferences, the franchisee must include the poll as an insert in the monthly subscribers' billing, at no cost to the Town, provided the polling insert meets the franchisee's reasonable requirements for such inserts. The franchisee will forward all returned polling results to the Town within ten (10) days of receipt.
3. The franchisee must meet with the Town, at the request of the Town, to review the results of subscriber polling, to discuss programming issues and options, and to consider the advice and recommendations of the Town.
4. The franchisee is to use its best efforts to provide a wide diversity of programming options to subscribers in the Town, assuring access to programming, including local commercial television stations and local non-commercial educational television stations, which reflects the tastes and needs of subscribers in the Town. Prior to the granting of a new or renewal franchise agreement, the cable operator is to obtain the board's approval of these local broadcast stations.

#### **7.3.12 Billing.**

##### **7.3.12.1 Billing Practices.**

The franchisee must:

1. At least once each calendar year, set forth, in writing its monthly billing and collection practices, policies and procedures for ordering changes in or termination of services and refund policies, and furnish a copy thereof to each subscriber (new and old) and to the Town. At such time as there is a change in such policies within the calendar year each subscriber and the Town is to be furnished a written notice;
2. Provide a monthly billing statement that itemizes each category of service and equipment provided to the subscriber and state clearly the charge thereof;

3. Provide a monthly billing statement that shows a specific payment due date not earlier than twenty (20) days after the date the statement is mailed;
4. Include in any promotional materials, announcements, and advertising of residential cable service to subscribers and the general public, in which price information is listed in any manner a clear and accurate disclosure of prices and terms;
5. In the case of pay-per-view or pay-per-event programming, all promotional materials must clearly and accurately disclose price terms, and in the case of telephone orders the franchisee is to take appropriate steps to ensure that the customer service representatives clearly and accurately disclose price terms to potential customers in advance of taking the order;
6. Maintain a public file containing all notices provided to subscribers as well as all written promotional offers made to subscribers by the franchisee. Material in the file must be retained for at least one year after the later of the date of mailing or public announcement of the information contained in a notice.

#### **7.3.12.2 Pro-Rated Service.**

In the event a subscriber's service is terminated, monthly charges for service are to be pro-rated on a daily basis and, where advance payment has been made by a subscriber, the appropriate refund is to be made by the franchisee to the subscriber within thirty (30) days of such termination.

#### **7.3.12.3 Service Disconnection.**

The franchisee must discontinue billing a consumer for service within ten (10) working days after the subscriber request that service disconnection unless the consumer unreasonably hinders access by the franchisee to equipment of the franchisee on the premises of the subscriber to which the franchisee must have access to complete the requested disconnection.

#### **7.3.12.4 Disconnection for Non-Payment.**

The franchisee has the right to disconnect a subscriber for failure to pay an overdue account, provided that:

1. The franchisee's billing practices and policy statement set forth the conditions under which an account will be considered overdue;
2. At least twelve (12) days prior to the proposed disconnection, the franchisee mails to the subscriber written notice of intent to disconnect for delinquency in payment;
3. The subscriber's account is at least sixty (60) days delinquent at the time said notice is mailed; and
4. The disconnection occurs at least twelve (12) days, and not more than sixty (60) days, after the mailing of the above written notice.

#### **7.3.12.5 Late Fees.**

The franchisee may not charge a late fee or other penalty or charge for late payment of any bill that exceeds one and one-half percent per month of the total amount due in the overdue bill.

#### **7.3.12.6 Billing Dispute.**

In the event of a billing dispute, and at the request of the Town, the franchisee must meet with the Town Manager to attempt to negotiate in good faith a resolution to the billing dispute. The

franchisee may modify the above billing practices if required to comply with more restrictive applicable state law.

### **7.3.13 Subscriber complaints.**

#### **7.3.13.1 Complaint Policy.**

The franchisee must promulgate within one hundred twenty (120) days a written policy statement setting forth the procedure for reporting and resolving subscriber complaints and furnish a copy thereof to each new and current subscriber and to the Town, and thereafter annually to all subscribers and the Town. Such notice must comply in all respects under law and this title. The procedure is to assure that telephone complaints will be given equal priority as written complaints. The franchisee may not require as a condition of providing cable service that subscribers agree to arbitration of disputes related to cable service, including billing disputes.

#### **7.3.13.2 Provisions.**

The written complaint policy provided to subscribers must:

1. Inform subscribers of how to communicate their views and complaints to the franchisee, the proper Town official and the Attorney General;
2. State the responsibility of the department of the Attorney General to receive subscriber complaints concerning matters other than channel selection and rates;
3. States the policy regarding and method by which subscribers may request rebates or pro rata credits as described herein;
4. The notice is to be in plain language, understandable by the general public, and in a convenient format. On or before January 30th of each year, the franchisee is to certify to the Town and the department of the Attorney General that it has distributed the notice during the previous calendar year as required by this section.

#### **7.3.13.3 Recording Complaints.**

Recording subscriber complaints is to be as follows:

1. The franchisee must keep a record or log of all telephone, TTY, TDD, written or walk-in complaints regarding quality of service, equipment malfunction, billing problems and procedures, employee attitude and similar matters as specified herein. These records are to be maintained for a period of two years.
2. The record is to contain the following information for each complaint received:
  - a. Date, time and nature of complaint,
  - b. Name, address and telephone number (if available) of the person complaining,
  - c. Investigation of the complaint,
  - d. Manner and time of resolution of the complaint,
  - e. If the complaint regards equipment malfunction or the quality of reception, a report indicating corrective steps taken, with the nature of the problem stated, and
  - f. Consistent with subscriber privacy provisions contained in the Cable Act of 1984, Public Law 98-549, the franchisee must make the logs or records of complaints available to any authorized agent of the Town having a franchise with the franchisee upon request during normal business hours for on-site-review at the headend office serving the Town.

**7.3.13.4 Franchisee Response.**

The franchisee must take action to handle all such complaints promptly, but not later than one business day following their receipt, except for subscriber service complaints, which are to be handled in accordance with Section 7.3.

**7.3.14 Preferential or Discriminatory Practices Prohibited.**

**7.3.14.1 Practices.**

Any and all preferential or discriminatory practices are prohibited.

**7.3.14.2 Rights of Individuals.**

The franchisee may not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of age, race, religion, sex, physical handicap or country of natural origin.

**7.3.15 Reports and records.**

**7.3.15.1 General Report Filing Requirements.**

The Town may require the franchisee to maintain and file such reports, contracts and statements, including, but not limited to, ownership, accounting, auditing and operating statement, engineering reports and other data, which the Town deems necessary or appropriate to administer the provisions of this title. Records which the franchisee must make available to the Town include, but are not limited to:

1. All correspondence between the franchisee and any of its agents, and all regulators or other government agencies;
2. All reports, applications, and other documents sent to, or required by, any government agency;
3. All financial records reasonably necessary to determine compliance with and carry out the provisions of this title and the franchise agreement;
4. A log of all requests for access time and the disposition of those requests.

**7.3.15.2 Technical Audit.**

Within ninety (90) days of receipt of a written request of the Town, the franchisee must provide the Town with a technical compliance audit of the cable system serving the Town. This audit requires a careful appraisal by franchisee of the extent to which it has met and is currently meeting all of its specific franchise obligations and federal/state regulations. The requested technical audit must include, at a minimum:

1. A complete description of the plant's design, age, components and condition and describing its capabilities and its limitations;
2. System maps showing plant routing and coverage;
3. A description of the franchisee's planned or active modernization plans;
4. A summary of relevant developments in the legal and regulatory arenas that relate to the technical and/or operational aspects of the cable system;

5. Technical and customer service performance records;
6. A review and description of the two most recent FCC proof of performance tests and measurement records interpreted in laymen's language demonstrating and describing the cable system's compliance or lack of compliance with the FCC Technical Standards set forth in 76 C.F.R. §76.601 et seq. as the same may be modified in the future, identifying any instances of non-compliance and describing all measures taken or under way to achieve compliance;
7. A list of any material violations by the franchisee of the technical rules of the FCC or of federal, or state governments and the Town, including but not limited to violations of rules and regulations regarding signal quality and safety during the past twelve (12) months;
8. A summary of all service interruptions, and any other known technical problems in the operation of the cable system not routine in nature, which service interruptions or technical problems existed during the prior twelve (12) month period, together with a description of the specific cause of the interruptions and technical problems and the steps the franchisee has taken to address the problem;
9. A summary of significant and representative subscriber and user complaints and the action taken by the franchisee in response thereto;
10. Certification by the person preparing the audit for the franchisee that they are legally qualified to represent the franchisee and that all information provided in the report is factually correct.

#### **7.3.15.3 Independent Audit.**

The franchisee must provide all items listed in this section to the Town. In the event the Town has concerns about the technical status of the cable system serving the Town, the Town may retain an independent technical consulting firm to audit the cable system serving the Town. The franchisee is to accommodate any reasonable requests for information and access to the cable plant necessary for such consultant to perform this investigation. In the event that the independent technical consultant finds that the cable plant serving the Town fails to comply with the requirements of federal, state, or local law, ordinances or regulations or applicable codes or the requirements of the franchise agreement, the franchisee must take immediate steps to remedy the noncompliance as promptly as is reasonably possible, using due diligence, and reimburse the Town for the reasonable expenses of said technical audit.

#### **7.3.15.4 Annual Report for the Town.**

The franchisee must provide annually to the Town copies of all other orders, rules, regulations or reports that are filed or required to be filed with other regulatory agencies, including the state and federal government. No later than April 1 of each year of the franchise agreement, the franchisee is to submit an annual report to the Town for the prior calendar year, which report must include at a minimum:

1. Total number of subscribers in the Town, including a breakdown of subscribers taking basic cable service, cable programming service and premium services as of December 31 of the prior calendar year;
2. The increase or decrease in the number of subscribers over the prior calendar year for the Town;
3. Total miles of cable distribution plant in the Town;
4. A specific description of the age and architecture of the cable plant serving the Town;

5. A specific description of any line extensions in the Town in the prior calendar year, including street names, distances, and start/end points, as well as a description of any projected line extensions planned for the coming year (which projections are not binding on the franchisee), along with a current coverage map;
6. Total homes passed in the Town and density measured in miles of plant divided by homes passed as of December 31 of the prior year;
7. A brief general description of any new federal or state regulatory changes which the franchisee believes will have a significant effect on the cable system, and the actual effect on the cable system in Kittery;
8. Any price changes in the prior year or projected for the coming year (which projections are not binding on franchisee).

#### **7.3.15.5 Additional Information.**

If the Town requests, the franchisee is to include in the annual report the following additional information:

1. A description of any technological upgrades or enhancements in cable service over the past year and any projected for the coming year (which projections are not binding on the franchisee);
2. The maximum number of amplifiers in cascade on the franchisee's cable system in the Town as of December 31 of the prior year;
3. A listing of any system outages in the Town over the prior year in excess of one hour, including the affected locations, the date, time, duration, cause of the outage, and steps taken to address the outage;
4. A summary of customer complaint records for the prior year, including an identification of any significant customer service issues raised in the Town in the prior year and any resolution or changes in service resulting;
5. Any new programming of changes in programming in the prior year and projected for the coming year (which projections are not binding on the franchisee), including, where known, specific programming offerings;
6. Any new or different services offered or made available in the Town in prior year and projected for the coming year (which projections are not binding on the franchisee);
7. The general outlook for the cable system for the coming year.

#### **7.3.15.6 Delivery.**

After delivery of the annual report for the Town, the franchisee must, at the request of the Town, attend a meeting with the Town to review and discuss any issues or questions raised in the Town's review of the annual report.

#### **7.3.15.7 Annual Financial Report.**

The franchisee will provide the Town on or before ninety (90) days following the close of the franchisee's fiscal year for the next ten (10) years with an annual financial report documenting the then-current financial condition of the franchisee. The financial report is to be prepared in accordance with generally accepted accounting principles and be certified as accurate by a Certified Public Accountant. The financial report is to include, at a minimum, on a consolidating and consolidated basis:

1. Balance Sheets;
2. Statements of operations;
3. Statements of cash flow;
4. A calculation of total indebtedness to earnings before interest, taxes, depreciation and amortization, ("EBITDA"), and EBITDA to total debt service (principal and interest), consistent with applicable debt covenants;
5. A calculation of the consolidated fixed charge ratio, consistent with applicable debt covenants;
6. A statement regarding the status of compliance with applicable financial ratio covenants in public indentures and credit agreements;
7. A copy of the most recent Securities & Exchange Commission (S.E.C.) Form 10-K and 10-Q; and
8. Any and all financial performance reports provided to the franchisee's lenders.

#### **7.3.15.8 Financial Condition.**

In the event that the Town has concerns about the financial condition of the franchisee or franchisee's financial capability to provide reliable cable service in the Town and to comply with its obligations under the franchise agreement, the Town may retain an independent financial consultant to review and investigate the franchisee's financial condition. The franchisee agrees to accommodate any reasonable requests for information necessary for such consultant to perform this investigation. In the event that the independent financial consultant concludes that the franchisee's financial condition is such that it will not be able to discharge its responsibilities as franchisee of the cable system, to operate and maintain the cable system, to meet obligations as they come due, to fund capital expenditures for replacements, extensions, upgrades and improvements or that franchisee is not in compliance with applicable financial ratio covenants in public indentures and credit agreements, the franchisee must reimburse the Town for all reasonable expenses of said financial consultant and promptly provide the Town with a detailed plan to address the financial concerns identified in the consultant's report.

#### **7.3.16 Rights Reserved to the Town.**

##### **7.3.16.1 Power.**

Neither the awarding of a franchise nor any provision hereof constitutes a waiver or bar to the exercise of any governmental right or power of the Town.

##### **7.3.16.2 Jurisdiction.**

The Town may do all things that are necessary and convenient in the exercise of its jurisdiction under this title and may determine any question of fact that may arise during the existence of any franchise granted hereunder. The Town Manager is hereby authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the operations of the franchisee under this title, either on behalf of the Town, the franchisee, or any subscriber, in the highest interest of the public.

##### **7.3.16.3 Property Tax.**

Nothing in this title or the franchisee shall encumber or prohibit the Town from the collection of property taxes, of whatsoever kind, allowed by state law.

### **7.3.17 Rules, Regulations and Procedures.**

#### **7.3.17.1 Measures.**

Except where specifically provided otherwise, the Town devises, promulgates and administers all rules, regulations and procedures which may be needed to implement any or all sections of this title and any or all sections of any franchise agreement, not inconsistent therewith, granted pursuant to this title. Any such rules, regulations, and procedures are binding on the franchisee operating a cable system in the Town.

#### **7.3.17.2 Town Acts.**

The Town must, either directly or through their designees:

1. Adopt such ordinance rules and regulations as they may deem necessary for regulating the operation of a cable system;
2. Make recommendations to franchisee concerning educational and local interest programming;
3. Resolve complaints, disputes or disagreements between subscribers and the franchisee;
4. Conduct public hearings and issue such appropriate orders as it may deem necessary to enforce the provisions of this title and any regulations, rules and orders and the franchise agreements, including the revocation of franchise agreements and the assessment of penalties for violations, as well as to correct any deficiencies in the operation of the system. The Town decisions and findings are final and binding upon all parties including the franchisee, except such decision or finding may be appealed to the York Superior Court pursuant to Rule 80B, MRCP;
5. All such ordinances, regulations, rules and orders of the Town may not be in conflict with those that have been or may be adopted by the Federal Communications Commission for the operation of such cable systems, except that unless expressly preempted, such ordinances, regulations, rules and orders may be more detailed, more strict or more restrictive than applicable FCC regulations; and
6. As part of its enforcement authority, the Town has the authority to bring legal action for damages, penalties and for injunctive relief. The Town is entitled to recover its costs, including reasonable attorneys fees, incurred in the enforcement of this title and the provisions of a franchise agreement, and any local rules or regulations adopted pursuant to this title.

### **7.3.18 Public, Educational and Governmental Access (PEG).**

#### **7.3.18.1 Channels.**

The franchisee must provide PEG access channel(s) for the Town or its designees in accordance with the following:

1. The franchisee must provide to the Town one channel for PEG access programming, on the basic tier, for the exclusive non-commercial public, educational and governmental access use by the Town or its designee(s);

a. At the end of the third year of any franchise agreement, and any time thereafter, and with at least ninety (90) days notice to the franchisee, the Town may require that the franchisee provide the Town with up to one additional exclusive PEG channel and/or government channel, if the Town determines, in its sole discretion, that the Town's and the public's use and demand for PEG access requires the dedication of an additional channel;

2. The franchisee must construct a fiber link from a Town location (to be designated by the Town) to the franchisee's headend for the purposes of providing live video transmissions. This construction must begin not later than thirty (30) days after the execution of the franchise agreement and must be completed not later than sixty (60) days after commencement of construction.

**7.3.18.2 Use.**

The Town, or its designee(s), has the exclusive use of the Town's PEG channels. Use of the PEG channel(s) are subject to such rules as the Town, or its designee(s), may adopt. All such PEG channel(s) must be included in the Basic Service Tier (Tier 1).

**7.3.18.3 Charges.**

There may be no charge by the franchisee to the Town or subscribers for the use of the PEG channel(s).

**7.3.18.4 Equipment.**

In order to develop and promote PEG programming, the franchisee must provide capital grants, for PEG equipment and facilities, in an amount to be determined in the franchise agreement.

1. The Town determines the use and distribution of these funds, and all such equipment and facilities are the property of the Town and housed in locations specified by the Town. The franchisee must, at the request of the Town, provide technical advice to the Town in the selection, purchase, installation and maintenance of such equipment and facilities.

2. The franchisee must monitor PEG channel(s), for technical quality and ensure that they are maintained at the highest commercial standards commensurate with those that apply to the cable system's channels.

3. The Town will be responsible for the quality of the audio/video signal up to the cable system insertion equipment. The franchisee shall provide, maintain and align all RF/Fiber-Optic/Digital equipment at each local point used to insert, transmit, receive or distribute PEG signals over the cable system and the Town Network.

**7.3.18.5 Access Information.**

The franchisee must, at the Town's request, insert in its monthly billing mailing promotional PEG announcements up to three times per year. Said printed announcements are to be prepared and printed by the Town at its sole cost and expense.

## **Chapter 7.4 VIOLATION and PENALTY**

### **7.4.1 Penalties.**

#### **7.4.1.1 Assessment.**

If a franchisee fails to observe any obligation under this title or the franchise agreement, as set forth in this appendix, attached hereto as part of this title, the Town may assess the franchisee, and the franchisee must pay to the Town, a monetary penalty, as set forth herein. Such assessment does not constitute a waiver by the Town of any other right or remedy it may have under this title or the franchise agreement, or under applicable law, including, without limitation, its right to recover from the franchisee such additional damages, losses, costs and expenses as may have been suffered or incurred by the Town by reason of or arising out of such breach of this title or the franchise agreement; provided, that any penalties collected by the Town from the franchisee pursuant hereto must be applied against, and reduce accordingly, the amount of any recoveries due the Town pursuant to this sentence for the failure to perform for which such penalties were assessed.

#### **7.4.1.2 Notification.**

Upon the Town's assessing a penalty pursuant to Section 7.3, notice of such assessment shall be sent to the franchisee, with a concise statement of the reasons thereof.

#### **7.4.1.3 Hearing.**

Within ten (10) days after receipt of a notice pursuant to Section 7.3, the franchisee may request a hearing before the Town's Town Manager. Such hearing must be held within thirty (30) days after receipt of the request thereof. The pending request of hearing suspends payment of the penalty until ten (10) days after receipt by the franchisee of the decision of the Town Manager confirming the penalty in whole or in part.

#### **7.4.1.4 Payment.**

Except as provided in Section 7.3, the franchisee must pay the full amount of any penalty to the Town within ten (10) days after receipt of a notice pursuant to Section 7.3.

#### **7.4.1.5 Default.**

Upon failure of the franchisee to make timely payment of an assessed penalty, the Town may recover the amount of any such penalty from the performance bond. Failure of the franchisee to make timely payment of an assessed penalty is a violation of material provision of the franchise agreement.

#### **7.4.1.6 Disposition.**

Amounts received by the Town as penalties assessed against a franchisee may be used by the Town for any purpose it deems fit.

#### **7.4.1.7 Schedule of Penalties.**

Pursuant to Section 7.3, the following monetary schedule of penalties apply as established in this appendix and are to be assessed against the franchisee, and liability therefore accrues from

the date of receipt of notice pursuant to Section 7.3, and upon failure to cure within the time period specified below, if any opportunity to cure is provided for the violation as set forth in this appendix.

1. Five Dollars Per Affected Subscriber Per Day. The fine for the following violations is five dollars per subscriber affected by the violation for each day until the violation is cured.

- a. Failure to respond to a request for repair or adjustment within the specified time with the penalty beginning twenty-four (24) hours after franchisee receives written notification of the violation.
- b. Failure to commence service to a subscriber within the specified time with the penalty beginning two days after franchisee receives written notification of the violation.
- c. Failure to pay a refund due a subscriber upon termination within the specified time with the penalty beginning five days after franchisee receives written notification of the violation.
- d. Failure to respond to a billing complaint within the specified time with the penalty beginning two days after franchisee receives written notification of the violation.
- e. Failure to respond to a service complaint within the specified time with the penalty beginning two days after franchisee receives written notification of the violation.
- f. Failure to pay a rebate for service loss within the specified time with the penalty beginning five days after franchisee receives written notification of the violation.

2. Fifty Dollars Per Day. A penalty, as set forth for the following violations is fifty dollars (\$50.00) each day, until the violation is cured.

- a. Failure to maintain the required insurance with the penalty beginning thirty (30) days after franchisee receives written notification of the violation.
- b. Failure to obtain and maintain the performance bond with the penalty beginning thirty (30) days after franchisee receives written notification of the violation.
- c. Failure to make timely payment of the franchise fee with the penalty beginning thirty (30) days after franchisee receives written notification of the violation.
- d. Failure to furnish a lockout key within the specified time with the penalty beginning seven days after franchisee receives written notification of the violation. This penalty is assessed on a per subscriber each day basis.
- e. Violation of the privacy restrictions in Section 7.3 of this chapter. This penalty is assessed on a per subscriber each day basis with the penalty beginning seven days after franchisee receives written notification of the violation.
- f. Failure to restore damaged property within the specified period with the penalty beginning three days after franchisee receives written notification of the violation.
- g. Failure to comply with Sections 7.2.4.3 and 7.2.4.4 with the penalty beginning seven days after franchisee receives written notification of the violation.
- h. Failure to eliminate objectionable signal interference with the penalty beginning fourteen (14) days after franchisee receives written notification of the violation.
- i. Failure to make and maintain records as required with the penalty beginning thirty (30) days after franchisee receives written notification of the violation. This penalty is assessed for each such record not maintained.

j. Failure to provide reports and records within the time specified in Section 7.3, with the penalty beginning fourteen (14) days after franchisee receives written notification of the violation. This penalty is assessed for each report or record not provided and by the means stipulated in this section.

3. Five Hundred Dollar Fine. Beginning sixty (60) days after franchisee receives written notification of any one of the below listed violations, a fine of five hundred dollars (\$500.00) is assessed against the franchisee until the violation is cured.

a. Failure to complete the construction of any I-NET or to provide cable modem service within the time required by the terms of the franchise agreement.

b. Failure to meet cable system design requirements and provide channel capacity pursuant to Section 7.3, and any applicable requirements of the franchise agreement. This penalty is assessed per day until required design requirements are met and required capacity and/or channels are provided.

c. Failure to provide PEG access channel(s), to install necessary upstream feeds and related equipment, and to provide facilities and equipment funding in accordance with this title and the terms of the franchise agreement. This penalty is assessed per day until compliance.

#### **7.4.2 Violation of Subscriber Privacy.**

The fine for a violation of subscriber privacy as prescribed in Section 7.3 is two thousand dollars (\$2,000.00) per occurrence.

#### **7.4.3 Failure to Provide Emergency Override Capabilities.**

The cable system must incorporate emergency audio override capabilities in accordance with FCC Emergency Alert System (EAS) standards. The fine for a failure of the system to perform as described in the event of a public emergency or vital public information situation, is one thousand dollars (\$1,000.00) assessed per occurrence, except to the extent the cable system is rendered non-functional due to damage caused by factors outside of the franchisee's reasonable control.

#### **7.4.4 Force Majeure.**

The franchisee may not be assessed any penalties for any delay or failure to perform its obligations under the ordinance if doing so is prevented by strikes, act of god, acts of public enemies, orders of any kind of the government of the United States of America or the state of Maine or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority, insurrections, riots, epidemics, earthquakes, fires, hurricanes, volcanic activity, storms, floods, washouts, civil disturbances, or any other cause or event not reasonably within the franchisee's control.

#### **7.4.5 Further Recourse.**

In addition to the foregoing penalties, upon the failure, refusal or neglect of the franchisee to cause any work or other act required by law or by this title or the franchise agreement to be properly completed in, on, over or under any street within any time prescribed, the Town may (but is not required to) cause such work or other act to be performed or completed in whole or in part and upon so doing will submit to the franchisee an itemized statement of the costs thereof.

The franchisee must, within thirty (30) days after receipt of such statement, pay to the Town the entire amount thereof.